

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 05-44481-rdd

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5 In the Matter of:

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7 DPH HOLDINGS CORP, ET AL,

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9 Debtors.

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13 U.S. Bankruptcy Court

14 300 Quarropas Street

15 White Plains, NY

16

17 December 12, 2013

18 2:01 PM

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20 B E F O R E :

21 HON ROBERT D. DRAIN

22 U.S. BANKRUPTCY JUDGE

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1 Hearing re: Reorganized Debtors' Motion for an Order to
2 Compel Compliance with, and to Implement, the Modified Plan,
3 Plan Modification Order and Related Documents (ECF #22075)

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1 P R O C E E D I N G S

2 THE COURT: Okay. DPH.

3 You know whenever I watch them they go from being
4 in front to losing. So I've stopped watching them now
5 because I'm jinxing them, so you're just the opposite.

6 UNIDENTIFIED SPEAKER: I think I'm qualified to be
7 the Nicks coach. I'll put Carmelo Anthony with the ball and
8 tell the other Nicks they can sit on the bench and see
9 whether that's good 48 minutes of basketball play to watch.

10 THE COURT: All right. So DPH Holdings.

11 MR. BERGER: I'm a Yankee fan, so -- rough days.
12 Thank you for the extra time, Your Honor. I'm Neil Berger
13 of Togut, Segal & Segal. We are counsel for the reorganized
14 debtors. On Your Honor's calendar this morning was the
15 adjourned date for the debtors' motion to compel docket
16 22075.

17 THE COURT: Right.

18 MR. BERGER: That hearing was adjourned to deal
19 with the motion to compel. We've reached an agreement in
20 principle. We're trying to document it, but if I can very
21 generally tell Your Honor where we're headed on this bearing
22 in mind that Your Honor has entered a number of seal orders
23 and there is commercially sensitive information that we
24 don't want to disclose, certainly not as I --

25 THE COURT: Well, at this point, I think the only

1 people on the phone are Michael Warner from Cole Schotz and
2 two people from Butzel Long. And Ms. Golden, is there
3 anyone else on the phone?

4 (No response)

5 THE COURT: All right. So, this portion of the
6 transcript I guess will be sealed, right? Or you just alert
7 me if to -- if there's a section that you think needs to be
8 sealed?

9 MR. BERGER: I think -- you mentioned Ms. Golden?

10 THE COURT: From the U.S. Trustee's Office.

11 MR. BERGER: Oh, I'm sorry. I know Ms. Golden. I
12 think that for purposes of my presentation today, I simply
13 won't state dollar figures.

14 THE COURT: All right.

15 MR. BERGER: That's all.

16 THE COURT: Okay.

17 MR. BERGER: Your Honor may recall that there was
18 a motion to compel and seek enforcement of the plan to help
19 fund the debtors' financial needs. We entered into a
20 partial settlement stipulation in October that Your Honor so
21 ordered. GM and the debtors complied. There was funding
22 Your Honor approved the environmental settlement. That's
23 closed, that is fully funded.

24 And then there was a funding request made by the
25 debtors. As a result of Mr. Brooks' good efforts, actually

1 the debtors' financial situation and balance sheet has
2 changed such that we don't need funding from GM. So our
3 request in the motion to compel is moot.

4 We have worked very hard and there's been some
5 arm's length negotiations, extensive negotiations and we've
6 come to an agreement such that the debtors will have cash on
7 hand to fund their needs to go into dissolution adequately
8 prepared. A sum certain will be paid to General Motors, New
9 GM rather and there are time tables set forth in our
10 stipulation.

11 Mr. Brooks will continue at the helm for the
12 reorganized debtors. Certainly his institutional knowledge
13 is very helpful and there is a consulting agreement that New
14 GM has been negotiating with Mr. Brooks and Mr. Brooks is
15 represented by counsel who is here with us today.

16 And those are the general concepts, Your Honor.
17 There will be releases exchanged and they will be set forth
18 in the stipulation for Your Honor to see.

19 THE COURT: Can I make sure I understand one
20 thing?

21 MR. BERGER: Yes.

22 THE COURT: You said that the debtors don't
23 need -- DPH doesn't need any more money from GM. That's
24 pre-dissolution?

25 MR. BERGER: Pre-dissolution and --

1 THE COURT: It's contemplated that there will need
2 to be some funding for some purpose post dissolution and
3 that's why you have this arrangement with --

4 MR. BERGER: Yeah. And to answer Your Honor's
5 question --

6 THE COURT: Okay.

7 MR. BERGER: -- with the A settlement, that
8 (indiscernible) odd dollars came in GM asserted that it was
9 entitled to sweep all of that money and it wasn't required
10 to leave any money behind. And the reorganized debtors
11 disagreed with that and set forth a budget and said this is
12 what we need to fund to address expenses that it anticipates
13 to incur in the course of the dissolution.

14 THE COURT: Okay.

15 MR. BERGER: So that money is staying behind. A
16 balance of cash on hand will be paid over to New GM. The
17 debtors have -- reorganized debtors have interests in other
18 assets that are being assigned to New GM. You'll recall
19 that under the funding agreement and the MDA there are
20 certain repayment obligations for advances and we're
21 addressing those in our settlement. Again, Mr. Brooks will
22 have a continuing role here.

23 THE COURT: Which GM will fund if necessary?

24 MR. BERGER: We've actually figured out what that
25 compensation is and there's an --

1 THE COURT: All right.

2 MR. BERGER: -- incentive there.

3 THE COURT: Right.

4 MR. BERGER: And that's been provided for. The
5 base compensation and the incentive is being memorialized in
6 an agreement.

7 THE COURT: Okay.

8 MR. BERGER: Provided that we document it as we're
9 -- I think we're close to being finished documented, New GM
10 won't have an objection to case closing. And I think that
11 generally summarizes the significant points of what we're
12 going to present o Your Honor in a stipulation in the next
13 day or so. Mr. Steinberg will stand to correct me in a
14 moment or supplement if I've missed something.

15 But I did want to state for the record, Your
16 Honor, that this agreement is the culmination of some very
17 extensive negotiations about some very hotly contested and
18 complex issues.

19 THE COURT: Well there's also a moving part so you
20 had to deal with that too.

21 MR. BERGER: I didn't --

22 THE COURT: There were also moving parts.

23 MR. BERGER: Yes. And we've tried to gauge them
24 as best we could and address the rights and claims of the
25 people who are engaged in this contested matter. But these

1 are very complex issues and certainly if we go forward in
2 litigation and we're trying -- I think we've gotten to the
3 point we're not -- but if we had to it would certainly be
4 very costly and extensive litigation. And I think both
5 sides would agree that there's some risk here. So we think
6 that -- and then the debtors believe that this is a proper
7 exercise of their business judgment and they are prepared to
8 finalize the documentation and be finished with this matter.

9 THE COURT: Okay. Well on that score, as far as
10 timing is concerned, I have a hearing scheduled on the 18th.

11 MR. BERGER: Yes.

12 THE COURT: And what are you looking to dissolve?

13 MR. BERGER: Before then and we're going to have
14 this stipulation signed up before the 18th.

15 THE COURT: Okay.

16 MR. BERGER: And I'm sure --

17 THE COURT: But that's really kind of a drop dead
18 date, I guess, right?

19 MR. BERGER: Yeah, yeah.

20 THE COURT: All right.

21 MR. BERGER: And we've all tried very hard to
22 figure in that mechanism and how to deal with it and I think
23 it's fair to say --

24 THE COURT: Well, I mean, it -- I need -- I mean,
25 you're going to lose your window with me because my calendar

1 is really full.

2 MR. BERGER: Yes. We are --

3 THE COURT: And I have commitments, I'm doing a
4 couple days mediation and just, you know --

5 MR. BERGER: Yeah.

6 THE COURT: -- that's the last time you can raise
7 any dispute with me.

8 MR. BERGER: Yeah. Yeah.

9 THE COURT: Okay.

10 MR. BERGER: Understood. And that's all I have.
11 I'm certain Mr. Steinberg has some words for the Court as
12 well.

13 MR. STEINBERG: Good morning, Your Honor. I think
14 Mr. Berger made an accurate presentation.

15 THE COURT: Okay.

16 MR. STEINBERG: But to try to add a little color
17 so Your Honor understands a little of back and forth and
18 some of which was (indiscernible) in the context of our
19 motion to adjourn.

20 There was an irony about me filing a request to
21 adjourn a motion, which there was no obligation anymore
22 to --

23 THE COURT: Well, now you're fighting about what
24 money should come back to GM.

25 MR. STEINBERG: That's correct.

1 THE COURT: Right. Okay.

2 MR. STEINBERG: So, Your Honor, just as a -- to
3 give a color, because ultimately we're going to be handing
4 up an order to Your Honor to approve and I just wanted to
5 give you a little more background.

6 The funding agreement that GM had committed to
7 back in 2009 provided for a window of financing and it
8 contemplated really that everything would have been finished
9 by the end of the his year and that the funding would happen
10 by the end of this year. And it turned out that that is
11 probably true for substantially everything. But like
12 everything in life, it wasn't a complete story.

13 So as we got close to the end, as the debtor was
14 appearing before you on a number of occasions, the
15 reorganized debtors as to what they needed to do to close
16 the matter, there were other issues that sort of propped up.
17 And the big issue -- the big (indiscernible) item was the
18 environmental settlement. And we knew that we -- at the end
19 of the day -- if we thought that was our obligation, it was
20 going to be a substantial sum.

21 And at the time that we funded it, we funded it
22 based on what we had thought the present position of the
23 reorganized debtors were. It turned out that after we had
24 committed to fund that amount, that the debtors had cut
25 deals on and concluded the A stipulation and there was an

1 aspect of the environmental settlement that we didn't see,
2 which led to millions of dollars coming back to the
3 reorganized debtors so that we knew at that point in time,
4 we clearly had overfunded the funding.

5 At the same point, as the debtor got closer to the
6 last month, it really had to do with a sharp pencil as to
7 what does it really need to deal with during the dissolution
8 process, the cost and expenses of doing it. And they
9 generally -- and this is my view. I'm sure it's not their
10 view. They generally would budget towards the higher side
11 of the world because you needed to anticipate the unknown
12 and they knew this was their last --

13 THE COURT: Well I hope they did.

14 MR. STEINBERG: Yeah, that was their last request
15 for funding.

16 THE COURT: I would want them to.

17 MR. STEINBERG: Right. So that was the back and
18 forth that we were going because that affected how much
19 money --

20 THE COURT: Right.

21 MR. STEINBERG: -- we would get back. And so when
22 you'll see the stipulation, you'll see money coming back to
23 GM, a substantial new budget that's being presented, which
24 will give them monies to run through the dissolution for a
25 three year period and it will involve a new arrangement with

1 Mr. Brooks who is the person who has been administering this
2 estate and will carry forward to that period of time.

3 THE COURT: And I'm assuming that there's probably
4 something in there that says if he ends up with a surplus it
5 goes back to GM too?

6 MR. STEINBERG: That's correct, Your Honor.

7 THE COURT: Okay.

8 MR. STEINBERG: And it provides that the -- when
9 we saw that there was monies coming back on the
10 (indiscernible) -- and there was monies coming back on the
11 environmental settlement, we did ask what other monies that
12 we are not presently aware of that may come back. So they
13 listed theoretical potential assets that are coming back.
14 And as always, we try to make sure that we had the complete
15 list. And so the stipulation that will be presented to you
16 will provide for assignments of that. Because under all
17 calculations, we will never get paid back in full the monies
18 that we advanced for the environmental settlement.

19 And the way that the funding agreement was
20 structured was that each month we were supposed to get
21 reimbursed from extra assets from that month to pay us back
22 on our advance. So that was the reason why it was -- became
23 a little more complex and a little more contested.

24 THE COURT: Okay.

25 MR. STEINBERG: But I think we are at the stage

1 now where we have it all pinned down and we have something
2 to present to Your Honor in the next few days.

3 THE COURT: All right. So I'll look for that.

4 I don't remember whether you have to give notice
5 to particular people for something like this under the wind
6 down.

7 MR. STEINBERG: We don't think we do, Judge.

8 THE COURT: Okay. You probably don't. I think
9 Mr. Brooks has the last say on it. Okay.

10 MR. KAPLAN: Bruce Kaplan, Friedman Kaplan Seiler
11 & Adelman representing Mr. Brooks --

12 THE COURT: Okay.

13 MR. KAPLAN: -- n this unfamiliar context.

14 THE COURT: Good afternoon.

15 MR. KAPLAN: Good afternoon, Your Honor.

16 MR. BERGER: So, Your Honor, I think I -- Mr.
17 Steinberg articulated his client's position and he
18 identified a number of the issues that were hotly contested.

19 THE COURT: Well that's the context to your
20 settlement and I -- reading between the lines, I thoughts
21 that where you were and --

22 MR. BERGER: Yeah.

23 THE COURT: -- that's a reasonable way to end up
24 as long as you all have been appropriately conservative in
25 reserving money for the wind down and I'm assuming you have.

1 So I'll look for that stip -- is it going to be a
2 stipulation order?

3 MR. BERGER: Yes, Judge.

4 THE COURT: That's fine.

5 MR. BERGER: Thank you again for the extra time
6 this morning (indiscernible).

7 THE COURT: Thank you for resolving it.

8 MR. STEINBERG: Thank you, Judge.

9 THE COURT: Okay.

10 (Proceedings concluded at 2:14 p.m.)

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C E R T I F I C A T I O N

I, Melissa Looney, certify that the foregoing transcript is
a true and accurate record of the proceedings.

Melissa Looney

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